

**FINAL REPORT
OF THE
INTERIM STUDY COMMITTEE ON
CRIMINAL JUSTICE MATTERS**



**Indiana Legislative Services Agency
200 W. Washington Street, Suite 301
Indianapolis, Indiana 46204**

October, 2006

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INTERIM STUDY COMMITTEE ON CRIMINAL JUSTICE MATTERS

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A copy of this report is available on the Internet. Reports, minutes, and notices are organized by committee. This report and other documents for this Committee can be accessed from the General Assembly Homepage at <http://www.in.gov/legislative/>.

I. STATUTORY AND LEGISLATIVE COUNCIL DIRECTIVES

The Legislative Council assigned the following responsibilities to the Committee:

- (1) issues pertaining to rights of "next of kin" in situations involving criminal activity;
- (2) improvements to Indiana's background check system; and
- (3) issues pertaining to qualifications and training of coroners.

II. INTRODUCTION AND REASONS FOR STUDY

1. The basis for the Committee charge concerning the need for studying rights of "next of kin" in situations involving criminal activity is Legislative Council Resolution 06-01 and Senate Resolution 48.
2. The basis for the Committee charge concerning the need for studying improvements to Indiana's background check system is Legislative Council Resolution 06-01.
3. The basis for the Committee charge concerning the need for studying issues pertaining to qualifications and training for coroners is Legislative Council Resolution 06-01.

III. SUMMARY OF WORK PROGRAM

The Committee met four times during the 2006 interim. Meetings were held as follows:

1. August 2, 2006, at the State House in Indianapolis, Indiana. Presentations were made regarding the constitutional and statutory duties of coroners, qualifications for other elected officials, coroner training, issues related to coroners and anatomical gifts, procedures for coroners to receive samples of bodily fluids from a hospital, and a proposal for a disaster mortuary operational response team.
2. August 30, 2006, at the State House in Indianapolis, Indiana. Presentations were made regarding next of kin issues in situations involving criminal activity and there were additional discussions concerning coroner issues.
3. September 20, 2006, at the State House in Indianapolis, Indiana. Presentations were made regarding Indiana's background check system and there was additional discussion pertaining to coroner issues. The Committee also considered preliminary bill drafts PD 3295, PD 3300, PD 3292, and SJ 9601.
4. October 18, 2006, at the State House in Indianapolis, Indiana. The Committee considered preliminary bill draft PD 3491 and this final report.

IV. SUMMARY OF TESTIMONY

Coroner Issues

The Committee heard testimony regarding several coroner related issues.

Bob Rudolph, an attorney for the Legislative Services Agency, testified concerning provisions of the Indiana constitution that relate to coroners. Mr. Rudolph explained that Article 6, Section 2, of the Indiana constitution permits the General Assembly to establish the duties of a coroner, but that the constitution as well as case law prohibits the General Assembly from barring a person without certain qualifications from assuming the office of coroner. Mr. Rudolph also explained that the constitution would not permit the General Assembly to prohibit a person without specified training from being a coroner, but that it was at least arguable that the constitution would permit the General Assembly to require duly elected coroners to receive specialized training after assuming the office.

Dr. Richard Dowden, Boone County Coroner and a member of the Indiana State Coroner Training Board, testified about the following:

- Indiana is the only state that requires training for deputy coroners.
- Deputy coroners are required to receive 48 hours of classroom instruction and complete a three-hour examination.
- Coroners should be required to take 48 hours of classroom instruction.
- The two year period by which deputy coroners must complete their training should be shortened.
- He explained the procedures a coroner follows if a deceased body is a John or Jane Doe.
- The bill drafts the committee is considering regarding coroners should be extended to deputy coroners as well.
- He provided the Committee information on how coroner's offices are statutorily set up in other states.

Richard Alfeld, Allen County deputy coroner, stated that while coroners are entitled to automatically receive certain medical records of a decedent, they must use a subpoena to receive blood draws and other fluid samples relevant to determining the cause of death. Mr. Alfeld said that coroners should be able to receive fluid samples as easily as other medical records.

Sam Davis of the Indiana Organ Procurement Organization testified that the revised uniform anatomical gift act contains new language proposing more dynamic cooperation between coroners and organ banks. Mr. Davis testified that coroners should also receive training concerning the preservation of organs during an investigation.

Qualifications for other elected officials

The Committee also heard testimony regarding qualifications for other elected officials. Warren Township assessor William Birkle testified that he believes that both county and township assessors should receive appropriate certification before they take office. Mr. Birkle testified that this certification is particularly important in light of the new property tax system.

DMORT

The Committee heard testimony from Eric Dietz, executive director of the Indiana Department of Homeland Security, about his proposal for the creation of a disaster mortuary operational response team ("DMORT") to assist coroners after a disaster. DMORT would provide equipment and expertise in dealing with a large scale disaster.

Next of Kin

The Committee heard testimony from several individuals regarding Indiana's next of kin requirements in situations involving criminal activity.

Ms. Linda Young described to the Committee her problems with Indiana's next of kin requirements when her grandson and pregnant daughter were murdered by the daughter's husband, who confessed to the murders soon after the bodies were discovered. Ms. Young was prohibited from making her daughter's funeral arrangements because Indiana law requires a spouse to make the decisions regarding the funeral. The husband refused to permit Ms. Young to make any funeral decisions until a family member met with the husband to hear details of the murder.

Dr. Richard Dowden, the Boone County Coroner and a member of the Indiana State Coroners Training Board, spoke in favor of the proposed legislation amending Indiana's next of kin requirements in situations involving criminal activity. Dr. Dowden also stated that autopsy reports only go to the next of kin and cannot be given to a parent or an adult child.

Mr. Larry Landis, Indiana Public Defenders Council, testified that PD 3102 was broadly written and there could be a problem if a spouse cannot make decisions regarding a deceased body if the spouse is only charged with, but not convicted of, murder or voluntary manslaughter. Mr. Landis also suggested that the order of who makes funeral decisions needs to be very clear in statute.

Mr. Curtis Rostad, Indiana Funeral Director's Association, stated he is in favor of PD 3102, but noted several concerns, including that it can take several days or months before a person is charged with a crime, going to court to determine who is to make funeral decisions may take too much time, and other statutes need to be amended regarding next of kin.

Mr. Steve Johnson, Indiana Prosecuting Attorney's Council, stated that PD 3102 is currently limited to murder and voluntary manslaughter and should be expanded to other crimes, including homicide, battery on a child, neglect of a dependent, and other types of homicide.

Indiana's Background Check System

The Committee heard testimony regarding the different criminal history background checks that the State Police offers, including limited criminal history background checks and national background checks. The limited criminal history background checks are limited to events that occur in Indiana and include all arrests within the previous year and every arrest with a disposition. These checks do not include arrests that are more than one year old and that do not have a disposition. The national background checks are through the FBI and the FBI charges the

State Police \$24.00 for each check. Captain Doug Shelton, Indiana State Police, suggested that the limited criminal history system could be improved by including all arrests, including those without a disposition.

Steve Johnson, Indiana Prosecuting Attorney's Council, testified that information placed in the criminal history database is fingerprint based. Approximately 60 counties employ an electronic system called "live scan" in which fingerprints are digitally scanned and electronically transmitted to the database. In counties without live scan, the prosecuting attorney receives paper fingerprint cards, scans and bar codes the cards, and electronically transfers the information to the criminal history database. Mr. Johnson also suggested that the system could be improved by: (1) moving to a name-based retrieval system; (2) including all dispositions; (3) requiring more uniformity in submitting the fingerprints; and (4) explaining to the public precisely what information is included and not included in a particular background check.

Mary DePrez, Indiana Supreme Court Judicial Technology and Automation Committee (JTAC), testified that JTAC is implementing a statewide database to connect courts and other agencies electronically, and that this system may be helpful in efficiently transmitting criminal history information.

Becky Pryor testified that nonprofit organizations with extensive volunteer programs conduct extensive background checks on their adult volunteers and that the expense of paying for the checks is substantial.

V. COMMITTEE FINDINGS AND RECOMMENDATIONS

The Committee recommended the following legislative drafts:

PD 3295 (Next of Kin)

Prohibits a person who is arrested for one of certain specified crimes in connection with a death from making certain determinations concerning the remains of the victim of the apparent crime for which the person was arrested. Requires the coroner, in consultation with law enforcement, to notify a cemetery owner, a crematory authority, or a seller of prepaid funeral and burial services that the person is barred from making the determinations concerning the remains because of the person's arrest. Makes other changes.

PD 3300 (Coroner Issues)

Prohibits disturbing a body, any evidence, and the scene of death until the coroner has photographed the body and law enforcement and the coroner have finished their investigation. Requires the coroner to positively identify a dead person by one of four specified methods. Requires the Indiana law enforcement academy (academy) to create and offer an introductory training course and an annual training course for coroners and deputy coroners. Provides that the courses must include instruction regarding death investigation, crime scenes, and preserving

evidence at a crime scene for police and crime lab technicians. Requires the academy to consult with the coroners training board and a pathologist in creating the training courses. Requires each coroner and each deputy coroner to successfully complete: (1) the introductory training course; and (2) the annual training course. Provides that a coroner's or deputy coroner's paycheck may be withheld for failing to successfully complete the introductory training course or the annual training course. Provides that a coroner's paycheck may be withheld for failing to release a written report or full autopsy report.

PD 3292 (Commission on Forensic Sciences)

Provides that the members of the commission on forensic sciences (commission) are to be appointed by July 1, 2007. Provides that commission members shall received a salary per diem and reimbursement for travel expenses. Requires the commission to submit a report to the legislative council by November 1, 2007, that includes the commission's findings and recommendations about the creation of a medical examiner system to assist coroners.

SJ 9601 (Coroner Qualifications)

Proposed constitutional amendment. Provides that the general assembly may prescribe by law additional qualifications for the office of coroner. This proposed amendment has not been previously agreed to by a general assembly.

PD 3491 (Criminal History Background Checks)

Specifies that a limited criminal history check includes arrests even if there is no disposition. Requires requests for limited criminal history submitted by noncriminal justice agencies and individuals to be name based, and requires the state police department to inform persons who receive criminal history information the scope of the information. Requires a court to order a convicted defendant to be fingerprinted unless the defendant was arrested and processed at the county jail, and requires the security and privacy council to adopt rules to ensure the uniform and efficient submission of criminal history data to the state police department. Grants civil immunity to prosecuting attorneys, clerks, and law enforcement officials for good faith errors or omissions that relate to the transmission of fingerprints or other criminal history data. Permits an employer to request a limited criminal history check of an employee who provides services involving contact with children or individuals who are mentally ill or disabled. Makes other changes and conforming amendments.

The Committee approved this final report 7-0.

WITNESS LIST

Bob Rudolph, Legislative Services Agency
Dr. Richard Dowden, Boone County Coroner and the Indiana State Coroner Training Board
Richard Alfeld, Allen County Coroner
Sam Davis, Indiana Organ Procurement Organization
William Birkle, Warren Township Assessor
Eric Dietz, Indiana Department of Homeland Security
Linda Young
Larry Landis, Indiana Public Defenders Council
Curtis Rostad, Indiana Funeral Director's Association
Stephen Johnson, Indiana Prosecuting Attorney's Council
Sally Jo Vasicko, Ball State University
Captain Doug Shelton, Indiana State Police
Mary DePrez, Indiana Supreme Court Judicial Technology and Automation Committee
Becky Pryor
Mike Lindsay, Indiana Law Enforcement Academy